

**UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

LARRY SMITH,

Plaintiff

V.

BLUESTEM BRANDS, INC. d/b/a
FINGERHUT,

Defendant

Case No.:

COMPLAINT AND DEMAND FOR JURY TRIAL

COMPLAINT

LARRY SMITH (“Plaintiff”), by and through his attorneys, KIMMEL & SILVERMAN, P.C., allege the following against BLUESTEM BRANDS, INC. d/b/a FINGERHUT (“Defendant”):

INTRODUCTION

1. Plaintiff's Complaint is based on the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania, and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Clark Summit, Pennsylvania
4 18411.

5 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

6 7. Defendant is a company with its principal place of business located at
7
8 6509 Flying Cloud Drive, Eden Prairie, Minnesota 55344.

9 8. Defendant is a “person” as that term is defined by 47 U.S.C. § 153
10 (39).

11 9. At all relevant times, Defendant acted through its agents, employees,
12
13 officers, members, directors, heirs, successors, assigns, principals, trustees,
14
15 sureties, subrogees, representatives, and insurers.

16 **FACTUAL ALLEGATIONS**

17 10. Plaintiff has a cellular telephone number that he has had for more
18 than one (1) year.

19 11. Plaintiff has only used this number as a cellular telephone number.

20 12. The phone number has been assigned to a cellular telephone service
21
22 for which Plaintiff incurs a charge for incoming calls.

23 13. Beginning in December 2014, and continuing through August 2015,
24
25 Defendant called Plaintiff on his cellular telephone on a repetitive and continuous

1 basis, at times calling nine (9) to ten (10) times a day.

2 14. When contacting Plaintiff on his cellular telephone, Defendant used
3 an automatic telephone dialing system and/or automatic and/or pre-recorded
4 messages.

5 15. Defendant's automated messages identified "Fingerhut, as the caller.

6 16. Defendant's telephone calls were not made for "emergency
7 purposes."
8

9 17. Although Plaintiff had an account with Defendant, he revoked
10 consent for Defendant to call his cellular telephone in mid-December 2014.
11

12 18. Specifically, in mid-December 2014, Plaintiff told Defendant to stop
13 calling him, revoking any consent previously given to Defendant to place calls to
14 his cellular telephone number.
15

16 19. Defendant heard and acknowledged Plaintiff's revocation of consent,
17 as well as, his demand to stop calling his cellular telephone number.

18 20. Nevertheless, Defendant persisted in calling Plaintiff on his cellular
19 telephone.
20

21 21. On one occasion, in which Defendant was unable to secure payment,
22 one of Defendant's male collectors, frustrated and hostile, used profane and
23 defamatory insults directed towards Plaintiff.
24

25 22. Most recently, Defendant contacted Plaintiff on September 7, 2015.

1 23. Upon information and belief, Defendant conducts its business in a
2 manner that violates the TCPA.

3 **DEFENDANT VIOLATED THE**
4 **TELEPHONE CONSUMER PROTECTION ACT**

5 **COUNT I**

6 24. Plaintiff incorporates the forgoing paragraphs as though the same
7 were set forth at length herein.

8 25. Defendant initiated multiple automated telephone calls to Plaintiff's
9 cellular telephone using an automated message and/or prerecorded voice and/or
10 automatic telephone dialing system.

11 26. Defendant's calls to Plaintiff were not made for emergency purposes.

12 27. Defendant's calls to Plaintiff were not made with Plaintiff's prior
13 express consent, particularly in mid-December 2014, as Plaintiff revoked any
14 previous consent given to call his cellular telephone.

15 28. Defendant's acts as described above were done with malicious,
16 intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights
17 under the law and with the purpose of harassing Plaintiff.

18 29. The acts and/or omissions of Defendant were done unfairly,
19 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
20 lawful right, legal defense, legal justification or legal excuse.

PRA YER FOR RELIEF

- a. All actual damages suffered pursuant to 47 U.S.C. § 227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3)(B);
- c. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C. § 227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

PLEASE TAKE NOTICE that Plaintiff, LARRY SMITH, demands a jury trial in this case.

RESPECTFULLY SUBMITTED,

Date: 09-10-15

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